

**TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
THURSDAY, JUNE 1, 2006
HOUSE ROOM C, GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA**

Convene - 9:30 A.M.

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West Central Regional Office
Radford & Co., Roanoke Co.

Dietrich

**IX. Consent Special Orders - Virginia Pollutant Discharge
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O

West Central Regional Office

Dietrich

Town of Clifton Forge

Rocky Top Wood Preservers, Inc., Rocky Mount

Tidewater Regional Office

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City of Franklin

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South Central Regional Office

Liggett

Town of Blackstone, Nottoway Co.

Northern Regional Office

Bowden

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Valley Regional Office

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Pine Hills Water & Sewer Company. Warren Co.

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X. Public Forum

XI. Other Business

Division Director's Report

Pollock

Future Meetings (September 6, 2006)

Berndt

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment

periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing. If a public hearing is held, a summary of the public comments received is provided to the Board for their consideration when making the final case decision. Public comment is accepted on consent special orders for 30 days.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or

Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cmberndt@deq.virginia.gov.

Water Quality Standards Adoption of Six Waters in Amherst County within the George Washington National Forest for Exceptional State Waters Designation: Staff intends to ask the Board to adopt proposed amendments to the Water Quality Standards regulation to designate six waters located totally on publicly owned land within the boundaries of the George Washington National Forest in Amherst County as Exceptional State Waters (9 VAC 25-260-30.A.3.c). The State Water Control Board approved public hearings on the proposals for these waters on September 27, 2005. The following waters proposed for Tier III designation are located entirely within the boundaries of the George Washington National Forest: Shady Mountain Creek and Rocky Branch in their entirety and portions of Roberts Creek, Cove Creek, Little Cove Creek, and North Fork Buffalo River. One public hearing for this proposal was held on March 21, 2006 at the DEQ South Central Regional Office in Lynchburg. Board member Shelton Miles presided over the hearing. No citizens attended the hearing. Agency staff received no comment regarding the proposed amendments

Water Quality Standards Adoption of Several Tributaries to Simpson Creek as Exceptional State Waters: Staff intends to ask the Board to consider proposed amendments to the Water Quality Standards regulation to designate three tributaries to Simpson Creek as Exceptional State Waters (9 VAC 25-260-30.A.3.c). These tributaries, which all flow though the George Washington National Forest, are Blue Suck Branch in Alleghany and Botetourt County, and Downey Branch and the North Branch Simpson Creek in Alleghany County. Comments received during the public comment period indicate that a major section of a fourth tributary, Piney Mountain Branch, flows through private land and is not being recommended for designation. At its September 27, 2005 meeting, the Board directed staff to proceed to Notice of Public Comment with amendments to the Water Quality Standards regulation to designate as Exceptional State Waters the identified segments of the following waters located within the boundaries of George Washington National Forest within the counties of Alleghany and Botetourt as presented: Blue Suck Branch in Alleghany and Botetourt County, and Downey Branch, Piney Mountain Branch, and the North Branch Simpson Creek in Alleghany County. A public hearing for this proposal was held on March 27, 2006 in Clifton Forge. Board member Shelton Miles presided over the hearing. Alleghany County Board of Supervisors unanimously adopted a resolution

on April 4, 2006 to oppose Tier III designation of the streams because they are of the opinion the streams receive adequate protection due to their location within the George Washington National Forest. Botetourt County provided no comment. The total number of citizen comment received (letter, email, and verbal comment at the public hearing) was 110. Of those, 64 (58%) supported and 45 (41%) opposed. Ms. Ursula Curtis spoke at the March 27, 2006 public hearing and identified herself as a property owner and stated that a portion of Piney Mountain Branch runs through her property. She expressed concerns of being unable to perform maintenance activities on a pond that is fed by Piney Mountain Branch should the stream be designated as an Exceptional State Water. Comment opposing the designation of these waters frequently stated that adequate protection is provided by their location within the National Forest and the Tier II level of the anti-degradation policy. Most stated that they, as citizens and/or riparian landowners, do a good job of protecting and preserving the beauty and cleanliness of the waters within their community and wish to protect their personal property rights. Comment supporting the designation frequently stated the proposed waters meet the necessary criteria for Tier III designation. Other comment states that the claim made by those opposing the designation of sufficient protection provided by the waters' location within the National Forest is inaccurate as there is no law or regulation to prevent point source discharges on National Forest lands or to prevent their sale to entities that may, in turn, develop those lands. Comment was received contending that some letters of opposition should be omitted from the record due to lack of commenter contact information, inaccurate statements, and/or the date of the letter is from a previous comment period. Agency public comment policy allows inclusion of comment from previous comment periods upon request of the commenter(s). All comment submitted during the comment period must be presented to the State Water Control Board for their consideration and the lack of an address does not necessarily invalidate the comment. Addresses are requested so that DEQ may meet legal obligations in 9 VAC 25-10-30 § K. Following the comment received from Ms. Curtis during the public hearing, staff contacted Alleghany County since the information previously provided by the county during the petition phase did not indicate any landowner other than the US Forest Service along the four streams. The Alleghany County Commissioner of Revenue office has since confirmed her ownership of the property. A portion of Piney Mountain Branch appears to border one side of the property. It was not readily apparent whether she supports or opposes the proposed designation. Subsequent efforts to contact Ms. Curtis have not been successful. To be consistent with directions from the Board during this designation process, only that portion of Piney Mountain Branch contained within the boundaries of the national forest should be considered for designation. However, staff questions whether either of the segments of Piney Mountain Branch located within the national forest boundaries is appropriate for designation. The upstream segment of the stream is dry during a portion of the year and the downstream segment is only approximately one-half mile in length.

Water Quality Standards Adoption of Criteria to Protect the Designated Uses of Lakes and Reservoirs from the Impacts of Nutrients: Staff will request Board adoption of amendments to the Water Quality Standards regulation for: 1) special nutrient standards for the two natural lakes in Virginia – Mountain Lake and Lake Drummond, 2) chlorophyll *a* and total phosphorus criteria for 116 man-made lakes and reservoirs, and 3) site-specific application of existing dissolved oxygen criteria to these man-made lakes and reservoirs. At its September 27, 2005 meeting the board approved for public comment amendments to the Virginia Water Quality Standards to protect the designated uses of lakes and reservoirs from the impacts of nutrients. Executive Branch Review as required under the Governor's Executive Order Number 21 was completed in December 2005 and the Notice of Public Comment was published in the Virginia Regulatory Town Hall on January 23, 2006 with the comment period ending April 7, 2006. A public hearing was held in Richmond on March 23, 2006. Mr. Bryson Powell was the hearing officer. The rulemaking also proposes clarifying that the existing dissolved

oxygen criteria during times of thermal stratification should only apply to the upper layer (epilimnion) in man-made lakes and reservoirs where nutrient enrichment is controlled by applicable nutrient criteria in section 9 VAC 25-260-187 of the regulation. In addition, a statement is included to allow for site specific modifications to the criteria if the nutrient criteria specified for a man-made lake or reservoir do not provide for the attainment and maintenance of the water quality standards of downstream waters; this was proposed to address the phased development of nutrient criteria for lakes and reservoirs preceding those for rivers and streams. This rulemaking effort also involved an evaluation of the applicability of Virginia's current regulatory program (Nutrient Enriched Waters) for controlling nutrients in surface waters, including lakes and reservoirs. The concept of Nutrient Enriched Waters was not incorporated into the final approach selected, so this rulemaking proposed the repeal of the following nutrient enriched waters designations in 9 VAC 25-260-350, Designation of Nutrient Enriched Waters: Smith Mountain Lake, Lake Chesdin, South Fork Rivanna Reservoir, and Claytor Lake. In response to public comment staff proposes the following substantive changes in the final proposal:

1. A recommendation was received during the public comment period to retain the Nutrient Enriched Waters designations for the four lakes because of the historical protection from nutrient enrichment that the companion Nutrient Policy has provided by requiring a monthly average total phosphorus effluent limit of 2 mg/L for point source discharges over a certain flow.

Response: Staff concurs with this recommendation and has removed the proposed deletion of the Nutrient Enriched Waters designation for the four lakes from the final proposal.

2. City of Norfolk questioned the proper fishery classification of Lake Whitehurst and asked DEQ staff to check with VDGIF.

Response: VDGIF confirmed that Lake Whitehurst is a warm water rather than a cool water fishery. Therefore, chlorophyll a criterion for Lake Whitehurst should be changed from 25 µg/L to 60 µg/L and the total phosphorus criterion from 20 µg/L to 40 µg/L.

3. VAMWA and several of its members commented that the regulation should provide a process for confirmation of use impairments prior to an impairment designation for a lake or reservoir with nutrient criteria violations.

Response: After consulting with the AAC and VDGIF, staff believes the regulation should contain a confirmation step to determine whether the designated uses of the water body are being attained when the numeric criteria are exceeded. However, under assessment procedures, when numeric criteria are exceeded the water body needs to be listed as impaired. EPA then expects a TMDL to be developed for the impaired water within twelve years of the initial listing. Staff believes this TMDL scheduling provides the flexibility and sufficient time to develop and adopt site-specific criteria needed to protect the uses for the water body. Wording has been added to the proposal that clarifies in those instances where the criteria are exceeded and the designated uses of the water body are being attained the water body can be removed from the impaired waters list once site-specific criteria are adopted and become effective.

For the purposes of clarity, staff also modified proposed wording in section 187 that water quality assessment of the nutrient criteria (chlorophyll a and total phosphorus) will be based on the two most recent monitoring years with available data.

Virginia Water Protection General Permits, as follows: WP1 Regulation 9 VAC 25-660 for Impacts Less than One-Half of an Acre; WP2 Regulation 9 VAC 25-670 for Facilities and Activities of Utility and Public Service Companies by the Federal Energy Commission or the State Corporation Commission and Other Utility Line Activities; WP3 Regulation 9 VAC 25-680 for Linear Transportation Projects; WP4 Regulation 9 VAC 25-690 for Impacts from

Development and Certain Mining Activities: At the June 1, 2006 Board meeting, the staff will ask for Board authorization to finalize the above referenced Revised and Renewing Regulations. Currently, Virginia Water Protection (VWP) General Permit WP3 will expire August 1, 2006, and Virginia Water Protection (VWP) General Permits WP1, WP2, and WP4 will expire on October 1, 2006. Should the Board approve the final regulations, all four final regulations will become effective August 1, 2006, and transition language is included in each regulation to detail authorization processing procedures before and after the effective regulation date. The proposed revisions include minor changes to improve the processing and coordination of authorizations, both for the public, DEQ, and other agencies. The VWP general permit regulations generally reduce the permitting burden to the public and minimizes the amount of agency duplication in processing permit authorizations and it is in the interest of all to continue to provide this level of service through the renewal of the general permits. The substance of the revisions included the addition and deletion of definitions; minor grammatical changes; formatting, consolidating and reordering of text to improve readability; clarification of existing requirements; requiring a complete application and compensatory mitigation for impacts to wetlands, open waters and streams which are protected by deed restrictions or similar protective covenants; extending the life of the regulations to 10 years instead of the current 5 years; extending the permit authorization period to up to 7 years for WP2, WP3, and WP4; reiteration of provisions in the main VWP regulation for purposes of emphasis; and amending the thresholds of coverage for wetlands and open waters and stream impacts, which were previously combined together as “surface waters.” A public comment period was held from January 9, 2006 to March 10, 2006, including one public hearing on February 6, 2006. DEQ received one oral comment and 12 written comments. Comments warranted several changes to the proposed regulations, as follows: further clarification of existing application and notification requirements in all four regulations; clarified definition of Stream Bed in all four regulations; clarification of permit conditions in all four regulations; and clarified a project’s boundaries for a Notice of Planned Change in the WP2 and WP3 regulations.

Amendment of 9 VAC 25-31, the VPDES Permit Regulation: This regulatory action is a final exempt regulation amendment required by law. The staff will ask the board to adopt the VPDES Permit Regulation as amended to conform to changes made in federal regulations. Federal regulation at 40 CFR Part 123, pertaining to delegation of NPDES authority to states, and the NPDES Memorandum of Agreement between the Commonwealth of Virginia and the U.S. Environmental Protection Agency require that the VPDES Permit Regulation maintain consistency with federal NPDES permitting requirements. This necessitates periodic updates to our permit regulation in order to reflect changes in the federal regulations. The amendments that are proposed are in response to changes in EPA regulations and, if adopted, will bring the Virginia regulation up to date with current requirements. A summary of the changes appears below. Note that one change (to 9 VAC 25-31-80) is a technical change correcting an error rather than a federally required change. Summary of Changes to VPDES Permit Regulation:

Va. Permit Regulation	Federal Regulation	Change
9 VAC 25-31-10	40 CFR 403.3	Revised pretreatment related definitions
9 VAC 25-31-30	40 CFR 438	Added new effluent guideline category
9 VAC 25-31-80	NA	Corrected typo (not a federal reg. change)
9 VAC 25-31-100	40 CFR 122.21	Cooling Water Intake Rule Changes (CWA 316(b))
9 VAC 25-31-165	40 CFR 125.80-88,125.90-99	Cooling Water Intake Rule Changes (CWA 316(b))
9 VAC 25-31-220	40 CFR 122.44	Cooling Water Intake Rule Changes (CWA 316(b))
9 VAC 25-31-290	40 CFR 124.10	Cooling Water Intake Rule Changes (CWA 316(b))
9 VAC 25-31-770	40 CFR 403.5	Pretreatment Streamlining Rule Changes

9 VAC 25-31-780	40 CFR 403.6	Pretreatment Streamlining Rule Changes
9 VAC 25-31-790	40 CFR 403.7	Pretreatment Streamlining Rule Changes
9 VAC 25-31-800	40 CFR 403.8	Pretreatment Streamlining Rule Changes
9 VAC 25-31-840	40 CFR 403.12	Pretreatment Streamlining Rule Changes
9 VAC 25-31-870	40 CFR 403.15	Pretreatment Streamlining Rule Changes

Local and Regional Water Supply Planning Regulation to address House Bill 552 (2006): Staff intends to ask the Board for adoption of an amendment to the Local and Regional Water Supply Planning Regulation clarifying that a town and an adjacent county may develop a regional water plan. This regulation was adopted by the Board on September 27, 2005 and became effective November 2, 2005. One issue that was the subject of much discussion in the Water Policy Technical Advisory Committee (WP-TAC) was the question of how many localities had to participate in the development of a regional water plan for it to be regional. The compromise language adopted by the WP-TAC and subsequently part of the final regulation identifies water plans developed for two or more towns, cities, counties, or a county and a city as regional water plans. The final regulation does not include a water plan developed by a single town and an adjacent county as a regional water plan. House Bill 552 amends the State Water Control Law dealing with water supply planning by adding the following language to Section 62.1-44.38:1.B: “The criteria and guidelines established by the Board shall not prohibit a town from entering into a regional water supply plan with an adjacent county.” Therefore the regulation must be amended. The definition of “regional water plan” in Section 9 VAC 25-780-30 has been changed by including the following language: “A town and an adjacent county may develop a regional water plan.”

“Fast Track” Rulemaking to Amend 9 VAC 25-720-70.C. (Water Quality Management Planning Regulation, Rappahannock River Basin Nutrient Waste Load Allocations): Staff will ask the Board to approve an amendment to the Water Quality Management Planning Regulation, 9 VAC 25-720, that was adopted at their September 21, 2005 meeting. The total nitrogen and total phosphorus waste load allocation figures for the Fredericksburg Wastewater Treatment Facility (VA0025127) are proposed for revision, under provisions in the Administrative Processes Act for the “Fast-track rulemaking process” (§2.2-4012.1). This action is being proposed since the design flow of the facility used to establish the allocation did not reflect the installed design flow capacity of the facility. At the Board’s September 21, 2005 meeting, nutrient waste load allocations were adopted for significant dischargers in the Shenandoah-Potomac, Rappahannock, and Eastern Shore Basins. The basis for the allocations was a combination of each facility’s design flow coupled with stringent nutrient reduction treatment. Design flow was defined as the capacity authorized by the VPDES permit and certified for operation by the State under 9 VAC 25-790-50. The Fredericksburg WWTF was assigned nutrient waste load allocations (WLA) based on these values:

Design Flow (MGD)	Annual Avg TN Concentration (mg/L)	TN WLA (lbs/yr)	Annual Avg TP Concentration (mg/L)	TP WLA (lbs/yr)
3.50	4.0	42,638	0.3	3,198

The following facts have lead to the proposed amendment for the Board’s consideration:

- Fredericksburg completed a plant upgrade and was issued a Certificate to Operate (CTO) on 3/24/94 by the Virginia Department of Health which read in part, “*The project included a **4.5 MGD** sewage treatment works...*”. (emphasis added)

- At that time, the VPDES discharge permit did not contain a design flow tier of 4.5 MGD, and only authorized flow up to 3.5 MGD.
- Subsequent reissuance of the VPDES permit authorized the discharge of 4.5 MGD but only after repeal of the 208 Water Quality Management Plan, which only addressed a 3.5 MGD plant.
- The 208 Plan was repealed in 2003.
- By letter to DEQ dated 12/06/05, Fredericksburg requested a change in design flow status to utilize the CTO design flow figure of 4.5 MGD.
- By separate letter to DEQ dated 12/06/05, Fredericksburg requested an amendment to 9 VAC 25-720-70.C., Water Quality Management Planning Regulation, for nutrient waste load allocations based on a 4.5 MGD (rather than 3.5 MGD) design flow.
- DEQ-Northern Regional Office Water Permits staff informed Fredericksburg by letter dated 12/21/05 that since the facility was authorized to operate at a design flow of 4.5 MGD, a revised Discharge Monitoring Report was provided that recognized the higher design flow and loading increases were given for TSS, BOD, TKN (May-Oct.), with ammonia-N limits added for Nov.-April. Fredericksburg was also informed that an upgrade would be required to meet total nitrogen and total phosphorus limits to be placed in the reissued permit in 2006.

The Fredericksburg WWTF has a 4.5 MGD design flow certified for operation and authorized by the VPDES permit. In fact, the 4.5 MGD design flow capacity has been physically in-place at the plant since the upgrade project was completed in 1994. Therefore, the nutrient waste load allocations for this discharge should be based on a design flow of 4.5 MGD, rather than 3.5 MGD, as follows:

Design Flow (MGD)	Annual Avg TN Concentration (mg/L)	TN WLA (lbs/yr)	Annual Avg TP Concentration (mg/L)	TP WLA (lbs/yr)
4.50	4.0	54,820	0.3	4,112

The staff will recommend: 1. That the Board authorize the Department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal. 2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal. 3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

Consideration of Petition to Designate the Hazel River as an Exceptional State Water: Staff intends to ask the Board at their June 1, 2006 meeting for a decision on whether or not to initiate a

rulemaking to amend the Water Quality Standards regulation to designate all, or a portion, of the Hazel River from its headwaters to its confluence with the Rappahannock River as an Exceptional State Water. At the Board's March 15, 2006 meeting, staff presented the results of its site visits and summary of the comment received from localities, riparian landowners, and the public on the nomination received from Ms. Sally Mello to designate the Hazel River as an Exceptional State Water. Staff reported that the segment of the river within Rappahannock County met the required eligibility criteria, but the lower segment in Culpeper County did not appear to meet the primary criteria for an exceptional environmental setting, based on the sections of the river staff could access. Comments received from Culpeper County indicated their support for the designation, while comments from Rappahannock County opposed the designation. Seventy-nine citizen comments in support and sixteen in opposition were received. Based upon this information, the Board directed staff to:

1. Contact Rappahannock County officials to discuss the Exceptional State Waters program and their concerns regarding potential impacts to the county and its citizens and respond to any questions they may have;
2. Revisit the section of the Hazel River in Culpeper County and contact local citizens to determine whether any segment or segments of the river meet the criteria for Exceptional State Waters;
3. Return to the Board at your next scheduled meeting with the results of these actions to assist the Board in determining whether all, or a portion, of the Hazel River should move into the regulatory process for designation as an Exceptional State Water; and,
4. Inform the petitioner, Ms. Sally Mello, of this Board action.

In a letter dated December 13, 2005, the County Administrator, John McCarthy, states the Board of Supervisors opposes the proposed Tier III designation for the Hazel River. DEQ staff met with Rappahannock County officials on April 25, 2006 to discuss their position on the designation and the following points were clarified:

1. Designation of the Hazel River is consistent with the County Comprehensive Plan.
2. County officials believe they have done a good job protecting the quality of the waters in the county, and have the rules and policies in place to continue that protection.
3. County officials have no problem with designation of the upper portion of the Hazel River within the Shenandoah National Park, which is approximately 3 miles in length [out of the total 15 mile length within the county]. *NOTE: Two out of the 18 Exceptional State Waters within the Commonwealth are located in the Shenandoah National Park in Rappahannock County - portions of the North Fork Thornton River and Piney River.*

One of the County's concerns is the effect a designation would have on riparian property owners if their existing septic tank/drainfield system failed. The homeowner would not be permitted to install a new system with a direct discharge to the Hazel River. Also, the county is concerned that even a replacement septic tank/drainfield system would not be allowed under 9 VAC 250260-30.A.3.b, which states that the quality of waters designated as Tier III shall be maintained and protected to prevent permanent or long-term degradation or impairment.

4. The other major concern for the county is that a Tier III designation would bind the county in perpetuity, thereby reducing options for the future members of the Board of Supervisors. They acknowledge this is a "philosophical" problem, but are concerned that greater restrictions in the future could be adopted in the Tier 3 program that would impact waters designated under the restrictions in effect today. They are also concerned that all of the streams in Rappahannock have the same high quality as the Hazel and what would prevent these other waters from being designated. The county could find itself with few/no discharge options.

In keeping with their goal of working cooperatively with the Board and DEQ, the County Administrator submitted a letter that outlines their concerns and suggests some conditions to a Tier III

designation of the Hazel River that would help alleviate their concerns. However, the conditions suggested by the county would not be consistent with existing implementation requirements for a water designated as a Tier III water. Staff revisited the Culpeper County section of the Hazel River on April 26 and 27, 2006 to conduct a more extensive survey in an effort to determine if the river met the criteria necessary to be considered for Exceptional State Waters designation. Three segments relatively evenly spaced along the Culpeper County portion of the river were navigated by kayak. Approximately 20 of the 32 total miles of river within Culpeper County were observed. Staff estimated at least 80% of the river banks and surrounding river corridor were either heavily wooded or had substantial wooded buffer between the river and agricultural development. Five to ten percent of the river banks showed increased erosion due to a lack of riparian buffers though these eroded areas tended to be short in length. Scenic geologic formations were frequently observed and dogwood and redbud trees were common. Waterfowl and other birds were abundant throughout the three segments and other wildlife such as whitetail deer, woodchucks, and beaver were also observed. Considering the overall scenic beauty observed, the relatively undeveloped environs of the river, minimal public access by motorized vehicle, abundant wildlife, and the potential for a high quality outdoor experience, staff concur that the Culpeper County section of the Hazel River generally meets the necessary requirements to be considered for Exceptional State Waters designation. While it is noted there are several short segments of the river within the county that do not appear to meet the Tier III waters criteria, staff believes the rulemaking process provides an opportunity to consider whether all or portions of the river within the county should be designated. Based upon the additional discussions with Rappahannock County officials and the more extensive field visit of the Hazel River in Culpeper County, staff recommends the Board initiate a rulemaking to amend the Water Quality Standards regulation to designate as Exceptional State Waters:

1. That portion of the Hazel River within Rappahannock County from its headwaters downstream to the Shenandoah National Park boundary; and,
2. That portion of the Hazel River starting at its first crossing of the Rappahannock County and Culpeper County boundary line downstream to its confluence with the Rappahannock River.

Board Approval for Submitting the Cockrell Creek Total Daily Maximum Load (TMDL)

Shellfish Bacterial Report to EPA Region 3 for Their Review and Approval: Staff will request the Board's approval to submit to EPA a TMDL report that was developed in response to a bacterial impairment for Shellfish Consumption on Cockrell Creek in Northumberland County. All sources of bacteria were evaluated for the TMDL study. Allocations were provided for point and non-point sources of bacteria in the watershed. EPA guidance states that all bacterial sources must be accounted for in the TMDL, regardless of size. Omega Protein disputes the bacterial Waste Load Allocation [WLA] and has urged DEQ to revise the TMDL to include either a higher WLA or to shift the WLA to a wildlife load allocation category. The source of fecal coliform bacteria in Omega Protein's discharge is due to seagull defecation into an open industrial lagoon. The Virginia Health Department has advised DEQ that bacteria from seagull defecation represents a threat to public health. Therefore, bacteria limitations were incorporated into Omega's recently issued VPDES permit (VA0003867). Omega did not appeal that permit condition. EPA guidance provides that the TMDL must reflect Omega's bacteria permit limitation. Cockrell Creek in Northumberland County was identified as impaired in 1998, based on Virginia Department of Health – Division of Shellfish Sanitation data and shellfish harvest closure. The stream is located in the Coastal Plain. As shown in Figure 1, 1.09 square miles are considered impaired. The watershed size is small; approximately 3.5 square miles (2240 acres). The watershed land use is primarily forested with agriculture as the next dominate land use. The Town of Reedville partly drains to Cockrell Creek. There are currently two permitted discharges in the watershed; the Reedville Sanitary District Sewage Treatment Plant (STP), permit #

VA0060712, and Omega Protein Reedville (VA0003867) discharge to Cockrell Creek. The immediate area of the STP outfall is identified by VDH-DSS as shellfish condemnation area 2C, and this portion of impairment ID VAP-C01E-08 is a prohibited shellfish harvest area. The direct harvest of shellfish for human consumption is prohibited because of the location of a municipal wastewater treatment plant in this segment. These shellfish waters are permanently closed to shellfish harvesting as a public safety measure, due to the possible presence of viral pathogens. Therefore this segment is evaluated for recreation use impairment only. There are four VDH bacterial monitoring stations in the watershed, illustrated on Figure 2. Stations 4, 5, & 6 exceed the water quality standards for shellfish harvesting. An analysis of bacterial source tracking (BST) shows there are contributions from all major categories tested. The average inputs from sources are as follows: 25% livestock, 21% wildlife, 37% human, & 16% pet. The BST data was used to develop Load Allocations (LA) for non-point sources within the watershed. The Waste Load Allocation (WLA) was calculated using the bacterial limits in the recently reissued Omega Protein permit. The TMDL requires the elimination of failing septic systems, reductions of approximately 99% of livestock and pet contributions, 4% of wildlife contributions, and reductions from Omega Protein, per their permit. DEQ and its partner agencies, such as the Dept. of Conservation & Recreation, intend for non-point source implementation to be staged so that efforts can be focused on the most cost effective conservation measures first. The implementation of the load allocation for nonpoint sources will occur using Virginia's existing nonpoint source control programs, including agricultural cost-share programs and funding opportunities under the Water Quality Improvement Fund to repair failing septic systems and replace straight pipes. Omega Protein's permit was re-issued in December 2005 and includes bacterial limits, including fecal coliform. This occurred prior to the TMDL completion. As a result, the TMDL reflects the permit limits. A four year compliance schedule is proposed in the permit. Omega Protein disputes the bacterial permit limits and the WLA. Omega has urged DEQ to include:

1. a higher wasteload allocation that accounts for omega's *de minimis* contribution without additional controls; or
2. shift Omega's wildlife contribution from the wasteload allocation to the load allocation.

The source of fecal coliform bacteria in Omega Protein's discharge is due to seagull defecation into an open industrial lagoon. This is a controllable source of bacteria that enters Cockrell Creek through a discharge pipe, thus the new bacteria limits in the reissued permit. EPA guidance does not allow for *de minimus* contributions. TMDLs throughout Virginia include WLAs for small general permits with discharges less than 1000 gallons per day. In addition, DEQ has contacted the VA Department of Health for guidance regarding seagull generated bacteria. VDH considers bacteria from seagulls to be a concern, as reflected in their letter. DEQ staff met with Omega Protein representatives and council on March 21, 2006 to discuss their concerns and attempt to find resolution. It was agreed this matter would be presented to the Board for consideration.

Issuance of VPDES Permit No. VA0091651, Rush River WWTP, Rappahannock County: On January 10, 2005, the Town of Washington submitted a VPDES Permit application for a proposed 0.06 mgd sewage treatment plant. If constructed, the plant will discharge to the Rush River. The proposed plant will be located just upstream of the Route 211/522 Bridge over the Rush River. It will serve the Town of Washington. Notice of the proposed permit issuance was published in the *Rappahannock News* newspaper on December 22, 2005 and December 29, 2005. The public notice comment period ended on January 23, 2006. Staff received 36 comments and recommended a public hearing. The Regional Director authorized a public hearing on the proposed permit issuance on February 13, 2006.

Notice of the Public Hearing and comment period was published in the *Rappahannock News* newspaper on February 23 and March 2, 2006, and all respondents to the original public notice were

sent written or e-mailed notification of the public hearing. The hearing was held on March 28, 2006, at the Rappahannock High School Auditorium. Ms. Komal Jain served as the hearing officer. A question and answer session preceded the hearing. The second public comment period ended on April 12, 2006. DEQ received 61 comments during the second public notice comment period and the public hearing. We have identified three general categories of comments that challenge the adequacy of the permit. They are briefly summarized below with responses that are inherent to the related specific comments on the following pages. It should also be noted that we received many comments in support of the proposed STP and draft permit but we have not detailed them since there is little reason for staff response.

Should DEQ permit a new discharge to an intermittent stream? If so, should this be done without requiring the applicant to submit an analysis of the alternatives? The suggested alternatives to discharge included reuse/reclamation, land application/spray irrigation, or disposal via drain field. When developing limits for a proposed discharge, DEQ considers the critical volumes of flow in the stream receiving the proposed discharge. In most discharge scenarios, the critical flow volume is during periods of low flow or drought, and the permit limits are accordingly more stringent than in cases when the receiving stream experiences flows equal to or greater than that of the discharge. In the cases where the discharge is to an intermittent stream, the effluent limits are developed so as to support the applicable in-stream water quality standards at the point of discharge. DEQ's methodology in developing limits for discharges into intermittent streams is comparable to those of most other states, and has been approved by the EPA.

The VPDES regulation does not require an applicant to evaluate alternative systems prior to applying for a VPDES Permit. Typically, when a preliminary engineering report (PER) is developed for the wastewater plant, an alternatives analysis is presented to demonstrate that the selected option is the most cost-effective one. The Town has gone beyond this in that before applying for a discharge permit, they explored several options, including mass drainfields, pumping to the Sperryville sewage treatment plant, building a wastewater plant and piping the discharge to other sites, natural treatment systems, spray irrigation, repair of failing septic systems, and other non-conventional alternatives. After completing this review, the Town concluded that the best solution for both the health of its residents and the health of the environment and the Rush River is to install a state-of-the-art sewage treatment plant.

Staff received several comments concerning the extent and severity of the problem of failing septic systems in the Town, and that it is possible that the proposed discharge would result in improvement of the in-stream conditions in the Rush River. These comments cited as evidence improvements to the nearby Thornton River after the Town of Sperryville constructed a wastewater treatment plant to address similar issues with failing septic systems and straight pipe discharges.

Were the methods used to develop permit limits related to oxygen demanding substances sufficiently sophisticated to protect water quality?

For pollutants related to dissolved oxygen in the receiving stream (cBOD and TKN), DEQ uses a simplified Streeter-Phelps model; the assumptions in this model represent the following worst case scenarios:

- Receiving stream at low flow conditions (lowest seven consecutive days in a given ten-year period);
- Continuous discharge at the flow rate for which the facility was designed;
- Effluent pollutant concentrations at maximum levels allowed by the permit;
- Effluent dissolved oxygen concentrations at minimum levels allowed by the permit, and
- Conservative re-aeration rates of the effluent-stream mix as it flows downstream.

This approach is consistent with that of most other states, and has been approved by EPA. Typically, more sophisticated models are used by permittees and their consultants to demonstrate that *less* stringent limits are necessary to protect dissolved oxygen levels in the receiving stream.

Staff took the additional step of assigning a Tier II designation to the Rush River. In so doing staff applied antidegradation as part of the model and this yields limits more stringent than might otherwise have been required. Nonetheless, in response to the concerns expressed by the citizens, staff is recommending that the DO effluent limit be change from 6.0mg/l to 7.3mg/l.

Do the nutrient related permit limits protect against impacts from nutrients, whether by ammonia toxicity or through the promotion of algal growth in the Rush River?

Nutrient levels in the permit have been derived from two criteria; the first pertains to the oxygen demand exerted by nitrogenous pollutants (TKN), and this is factored into the Streeter-Phelps model. The second criterion pertains to 9 VAC 25-40-70.A.3.a, *Regulation for Nutrient Enriched Waters and Discharges within the Chesapeake Bay Watershed*, which became effective in August 2005. This regulation establishes the requirement that a facility such as that proposed by the Town meet a total nitrogen concentration of 8.0 mg/l and a total phosphorus concentration of 1.0 mg/l. Should the permit be issued, it is the Town's prerogative whether or not to design the facility to meet more stringent nutrient concentrations, in which case the permit limits may be modified in the future to match whatever nutrient removal technology is eventually installed.

The TKN limit in the permit is 5.0mg/l. In order to meet the TKN limit of 5 mg/l as well as the Total Nitrogen limit of 8 mg/l, the proposed facility will be required to nitrify (convert Ammonia-N to Nitrate) year round, removing virtually all of the Ammonia-N. Wastewater treatment plants that fully nitrify typically have effluent Ammonia-N levels well below 1 mg/l, especially during the critical warm weather/low flow conditions on which the 2.2 mg/l Ammonia criterion is based.

§62.1-44.19:15.A.4. of the *Code of Virginia* requires facilities such as those proposed by the Town to offset any nutrient discharges resulting from their operation. DEQ is currently developing a new regulation, *General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia* 9VAC25-820, that will implement this legislation; the draft regulation is currently open for public comment and all are invited to comment. The regulation and the general permit associated with it will govern allowable offsets and will be effective by the end of the year, well before the Town can begin construction of a new STP.

Offsets will be required to be submitted to DEQ for approval prior to issuance of the CTO; they must be in the Rappahannock River Watershed and must not contribute to water quality effects locally, downstream, or in the Chesapeake Bay. In addition, pursuant to §62.1-44.19:12-:19, offsets must be reported annually and the permittee must provide confirmation of availability of offsets for the coming year. In the event that the Town of Washington offsets their nutrient discharge by acquiring credits from other point sources operating under the watershed general permit, then those trades will be made available for public review although there will be no opportunity for a formal public comment period. Should the Town choose to offset their nutrient loads by arranging for other nonpoint source improvements such as the removal of failing septic systems or the installation of agricultural BMP's, then those offsets will be added to the individual VPDES permits as enforceable requirements. Such offsets, being included in the individual VPDES permit, will be subject to public comment. Repair of failing septic systems would be considered to be a "baseline" requirement under the Chesapeake Bay Tributary Strategies and thus not eligible for the generation of nutrient removal credits. However, as all (even properly functioning) septic systems release nitrogen to groundwater (that eventually reaches surface waters), reduction of the load associated with a properly functioning septic system would be eligible. It is possible that the technology requirements and offset requirements will result in the

proposed discharge having less nutrient-related impact than some of the alternatives suggested by opponents of the proposal.

Proposed changes to the draft permit: 1. In preparing the answer to Comment #21, we noticed we made a mistake in calculating the limits for TRC. The limits in the draft permit were not calculated with the correct WLA from Attachment 7 of the Fact Sheet. The limits in the permit for TRC should be:

Monthly Average: 0.002 mg/l

Weekly Average: 0.003 mg/l

2. Based on the level of interest in this draft permit and concern for the Rush River expressed by many citizens, staff will recommend two additional changes to the draft permit:

- Change the DO effluent limit from a minimum of 6.0mg/l to 7.3mg/l.

- Add a special condition requiring instream monitoring above and below the point of discharge. Staff believes these two changes provide added assurance that the proposed discharge will not compromise the water quality standards of the Rush River. A detailed summary of comments and response document is in the Board book and available upon request.

REPORT ON SIGNIFICANT NONCOMPLIANCE: Three permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending December 31, 2005. The permittees, their facilities and the reported instances of noncompliance are as follows:

1. Permittee/Facility: **Town of Culpeper, Culpeper Sewage Treatment Plant**
Type of Noncompliance: **Failure to Meet Compliance Schedule (Complete Construction) and Violations of Effluent Limit (Ammonia Nitrogen)**
City/County: Culpeper, Virginia
Receiving Water: Mountain Run
Impaired Water: Mountain Run is listed on the 303(d) report because of fecal coliform contamination. The contamination has been attributed to nonpoint source pollution.
River Basin: Rappahannock River Basin
Dates of Noncompliance: Construction schedule noncompliance from August 2004 through December 2005, effluent limit noncompliance from April 2005 through July 2005.
Requirements Contained In: Consent Special Order and VPDES Permit
DEQ Region: Northern Virginia Regional Office
Completion of upgrade of the sewage treatment plant was delayed, in part, due to design defects. In addition, subsequent to the initiation of the construction project, the Town determined that a plant expansion and upgrade (to address compliance with ammonia limits) was necessary. The Town therefore proposed a second construction project to both upgrade and expand the plant. An administrative order addressing the planned upgrade and expansion (due to be completed in 2007), and which contained a \$10,000 penalty was approved at the March 2006 Board meeting.
2. Permittee/Facility: **King George County Service Authority, Dahlgren Wastewater Treatment Plant**
Type of Noncompliance: **Failure to Meet Permit Effluent Limit (Total Kjeldahl Nitrogen)**
City/County: Dahlgren, Virginia
Receiving Water: Williams Creek

Impaired Water: Williams Creek is a Category 5 impaired water due to low dissolved oxygen and pH. The source of the impairment is unknown.

River Basin: Rappahannock River Basin

Dates of Noncompliance: July, August, September and October 2005

Requirements Contained In: VPDES Permit

DEQ Region: Northern Virginia Regional Office

Staff of the Northern Virginia Regional Office have negotiated a consent special order addressing the violations and assessing a \$15,400 penalty. Staff plans to bring the order to the Board's next quarterly meeting for its review and approval.

3. Permittee/Facility: **Omega Protein, Inc., Reedville Wastewater Treatment Facility**

Type of Noncompliance: **Failure to Meet Permit Effluent Limits (Ammonia Nitrogen)**

City/County: Reedville, Virginia

Receiving Water: Cockrell's Creek

Impaired Water: Cockrell's Creek is listed as impaired due to a shellfishing closure, mandated by the Department of Health, because of the Reedsville sewage treatment plant discharge.

River Basin: Chesapeake Bay

Dates of Noncompliance: May through December 2005

Requirements Contained In: VPDES Permit

DEQ Region: Piedmont Regional Office

The above referenced violations were of permit limits for outfall 006. At the time the violations occurred outfall 006 did not exist and the Ammonia Nitrogen limit in the Permit was no longer required for the protection of water quality. Specifically, in the summer of 2002 Omega modified its treatment scheme by adding a diffuser to outfall 001, the outfall through which 006 flows had been directed. At that time the Permit should have been amended or reissued to acknowledge the treatment scheme modification and to indicate that Ammonia Nitrogen limits were no longer necessary. The Permit was not reissued until December 2005. The reissued Permit eliminated Ammonia Nitrogen limits for outfall 001. No action is recommended for the referenced violations.

Miller Oil Company, Inc., Richmond - Consent Special Order – w/Civil Charges: Miller Oil Company, Inc. ("Miller Oil") owns two gasoline service stations on West Broad Street in Richmond, Virginia. Both facilities have Underground Storage Tanks ("UST"). Breez In 86 is located at 11520 West Broad Street and the Breez In Convenience Store is located at 8430 West Broad Street in Richmond, Virginia. An inspection conducted at the Breez In 86 store on October 14, 2004 noted that the release detection records for the UST and piping were not available during the time of the inspection. These records were subsequently provided to the Department after the issuance of the Notice of Violation issued on September 27, 2005. The inspection of the Breez In Convenience Store on November 22, 2004 resulted in a Notice of Violation being issued on September 23, 2004 for a series of UST violations. They were cited for the failure to provide records to the Department during the time of the inspection. Subsequent to the NOV, the records provided to the Department indicates that the site was not meeting the release detection requirements of the regulations. After issuance of the Notices of Violation, the owner provided the Department the required documentation cited in the NOV. A review of this documentation indicates that one of the sites is not meeting the release detection requirements required for UST facilities. The proposed Order requires a test be conducted to verify the protection of the USTs; requires additional documentation be submitted for the

Department's review; and requires that the facility uses an acceptable release detection method as required by the regulations. Civil Charge: \$6,000

Mr. Henry Parker, Jr., Prince George County - Consent Special Order - w/ Civil Charges: In 2004, Mr. Henry Parker, Jr. bought property formerly known as Starke's Grocery, located at 17607 James River Drive, in Disputanta, Virginia. When Mr. Parker bought the property, the property contained five underground storage tanks (USTs) that were used to store petroleum for retail sale. In March 2005, DEQ staff made a site visit to inspect the USTs. At the time of the inspection, Mr. Parker was in the process of removing 3 of the USTs from the ground. Pursuant to the inspection, DEQ staff sent Mr. Parker a Request for Corrective Action letter. The letter requested that Mr. Parker submit an amended UST notification form and provide DEQ with the required closure documents for the USTs that were being removed. Due to failure to respond to the request, DEQ issued a Warning Letter in July 2005. In August 2005, DEQ received the site testing information for the closed USTs. In September 2005, DEQ staff performed a follow-up inspection. DEQ staff verified that 3 USTs had been removed from the ground but no disposal manifest was provided. DEQ staff also noted that the remaining 2 USTs at the property were improperly closed. On December 6, 2005, DEQ issued a Notice of Violation (NOV) to Mr. Parker. The NOV was issued for improper closure for the 2 remaining USTs; failure to provide a permit from the County for the permanent closure of the USTs; and for failure to submit a UST notification form amending the status of the USTs currently registered as being in use at the property. In response to the NOV, Mr. Parker provided all requested information. Mr. Parker has completed all of the requirements required by the regulations. The order only requires the payment of a civil charge. Civil Charge: \$2,450

Pollard Environmental LLC, Henrico County - Consent Special Order - w/ Civil Charges: In February 2005, DEQ received a report of blue colored water running in the ditch near the intersection of Pepper Avenue and W. Franklin St., in Henrico County. DEQ staff was aware that Pollard Environmental LLC (the Company) was under contract to collect petroleum from a leaking AST and working approximately one block from the reported discharge. Upon contacting the Company, DEQ learned that the Company was performing a dye study with the leaking AST. DEQ requested that the Company vacuum the dye from the ditch(s) and provide MSDS sheets for the dye. The Company hired a firm to vacuum the dye. The MSDS sheets provided by the Company revealed that the dye was designed to be diluted in a sprayer and land applied. The MSDS sheets stated not to allow the product to contaminate drains, sewers, streams, ditches or bodies of water; to prevent large quantities from contacting vegetation; and to keep animals away from large spills. The MSDS sheets also reported an immediate acute health hazard for skin and/or eye irritation, and ingestion through inhalation. The Company allowed the product to enter the ditches and storm drains in the neighborhood, did not alert the residence of the dye or of any potential hazards associated with the product, nor did the Company report the unusual discharge to DEQ. A NOV was issued in March 2005 for the discharge into state waters and for failure to report the discharge. The cost of the clean up was approximately \$1,600. The Company was cooperative during the clean up and the remediation of the site has been completed. The only requirement of the Order is the payment of a civil charge. Civil Charge: \$1,600

Mr. Francis Jarrelle, Chesterfield County - Consent Special Order - w/ Civil Charges: In July 2005, DEQ received a report from the Corps of Engineers "(Corps)" of unauthorized filling of wetlands on property that Mr. Francis Jarrelle was developing in the Salisbury subdivision in Chesterfield County, Virginia. Mr. Jarrelle is the owner and developer of property containing four lots on Thorngate Road in the subdivision. In May 2005, the Corps and Mr. Jarrelle's consultants had conducted a site inspection in the Salisbury subdivision. During the inspection, the Corps observed

unauthorized activities in wetlands at Lot #17. The Corps notified Mr. Jarrelle by letter dated July 11, 2005, of the unauthorized activities. DEQ issued a NOV to Mr. Jarrelle on September 14, 2005, in response to the report received from the Corps. The NOV cited Mr. Jarrelle for unauthorized filling of approximately 0.15 acre of forested wetlands. In order to resolve the matter, an on-site meeting was scheduled. On October 19, 2006, DEQ staff met on-site with the Corps, County, Mr. Jarrelle and his consultant. DEQ staff observed that the site appeared to previously have contained palustrine forested wetlands. The wetlands had been cleared, grubbed and filled. The foundation for a house was already in place. Since restoration was no longer a remedial option, Mr. Jarrell agreed to purchase at a 2:1 ratio, wetland credits at an approved mitigation bank. The order requires that Mr. Jarrelle purchase credits at an approved wetland mitigation bank and pay a civil charge. The cost of the injunctive relief is approximately \$18,300. Civil Charge: \$6,000

Riverton Associates, Powhatan County - Consent Special Order – w/Civil Charges: The Winterfield Road Relocation Project is owned and being developed by Riverton Associates. Wetland and stream impacts associated with the road relocation (“Phase I”) were permitted under VWP Permit No. WP3-04-1157, which was issued by DEQ on September 23, 2004. Riverton Associates has submitted a second VWP Permit application for authorization to impact additional wetlands and streams within the proposed commercial and residential development surrounding the relocated road (“Phase II”). That application is incomplete and DEQ has not yet issued a permit for that portion of the project. On site visits during June, September, and December 2005, DEQ staff noted that several permit requirements were not being adhered to, including flagging of unimpacted wetlands and installation of appropriate erosion and sediment (“E&S”) controls. Lack of appropriate E&S controls had resulted in up to 14 inches of sediment deposited over areas of forested wetlands and stream channel. During the June 2005 visit, staff also noted that forested wetlands and a stream channel located in Phase II had been cleared and grubbed, although a permit had not yet been issued for these impacts. During the subsequent site visits in September and December 2005, staff noted that these areas were filled and graded so that site development could progress into surrounding upland areas. A file review indicated that the permittee had not submitted 10-day advance notification of construction, construction monitoring reports, or documentation of mitigation as required by the permit. On December 15, 2005, the Department issued a Notice of Violation (NOV) to Riverton Associates for the compliance issues described above. Department staff and representatives from Riverton Associates met on December 28, 2005, to discuss the compliance issues at the facility. During the meeting, Staff observed that the continued lack of appropriate E&S controls had resulted in excessive sedimentation over an additional +/- 1,060 linear feet of Roberts Branch. A schedule for corrective action was agreed upon during the meeting. The proposed Order requires mitigation for unauthorized impacts to wetlands and streams, correction of deficient E&S controls, and restoration and monitoring of wetlands and streams impacted by sedimentation. Fulfillment of the requirements of the Order will cost approximately \$110,000. Civil Charge: \$25,195

City of Virginia Beach - Consent Special Order with Civil Charge: Lake Trant is a City of Virginia Beach (“City”) neighborhood lake, which provides beneficial uses including recreation and the conveyance of stormwater. VWP Permit No. 04-1239 was issued to the City on December 14, 2004 authorizing maintenance dredging of Lake Trant to remove accumulated silt which was impeding its ability to effectively convey and treat stormwater runoff. During DEQ inspections on October 6 and 12, 2005, following citizen complaints, DEQ staff documented several compliance deficiencies of the Permit. These deficiencies included: (1) unpermitted placement of fill in six sections of the Lake, where the dredging barge pushed and scraped bottom sediment onto the Lake sides, (2) placement of dredged material on emergent wetlands in two areas; (3) dredge sediment falling from a transport

barge into the Lake; (4) rinsing of dredge sediment from a transport barge into the Lake; (5) improper erosion and sedimentation controls at the dredge staging/off loading site; and (6) several failures of documentation and reporting during the project. The City was advised of the above referenced observations in Notices of Violation issued on November 17, 2005 and, following additional information, on January 27, 2006. The order requires the City to comply with the terms and conditions specified in the VWP Permit No. 04-1239 and submit a correction plan to address areas of unpermitted fill in the Lake. The City executed the order on March 29, 2006 and is currently in compliance with the order. Civil Charge: 30,000

Radford & Company for the Mason's Crest Subdivision, Roanoke County - Consent Order with a Civil Charge: The Mason's Crest subdivision is owned and developed by Radford & Company. The subdivision was permitted under Virginia Water Protection Permit # WP4-04-2589 and this General Permit expires on May 17, 2010. On June 20, 2005, DEQ staff inspected the site to verify compliance with the requirements of the permit. During the inspection, DEQ staff observed activities that did not appear to be in compliance with the requirements of the permit. On July 13, 2005, the Department issued a Notice of Violation to Radford and Company for failing to comply with the requirements of the permit. Specifically, failing to countersink relative to the stream bed a permanent culvert, failing to divert stream flow before installing road crossings, failing to design, install, and maintain erosion and sediment controls, failing to submit construction monitoring photographs, unpermitted discharges to state waters, and failure to comply with the Virginia Water Protection general permit resulting in deposition of sediment in a state water. DEQ staff conducted a follow-up inspection on August 10, 2005. DEQ staff again observed apparent non-compliance at the site and Radford & Company voluntarily ceased operation on August 11, 2005. On August 31, 2005, DEQ staff conducted another inspection and determined that Radford & Company had corrected and addressed the alleged violations in the Notice of Violation. Radford & Company resumed development of the site. The Order before the Board assesses a civil charge for five violations of Virginia Water Protection Permit # WP4-04-2589. Civil Charge: \$4,500

Town of Clifton Forge - Consent Order: In response to overflows, bypasses, and effluent limit violations, the Board issued a Consent Order in 1999 to Clifton Forge, Alleghany County, and the Town of Iron Gate. The 1999 Order required Clifton Forge to upgrade its Sewage Treatment Plant, install equalization basins at the Plant, and reduce inflow and infiltration in the sewage collection system. Although the Clifton Forge performed the work required by the 1999 Order and effluent limit violations and bypasses at the Plant have subsequently diminished, the collection system continues to have overflows. DEQ issued a series of Notices of Violation for these overflows in 2004 and 2005. Clifton Forge has recently initiated a systematic preventative maintenance program in its collection system, including root cutting and camera investigation of lines. Recent data indicates that overflows due to line blockages and wet weather have both declined. The Order before the Board revises and expands the inflow and infiltration requirements of the 1999 Order. Under the proposed Order, the Town would be required to evaluate its collection system, prepare a corrective action plan for review and approval by DEQ, and implement the approved corrective action plan. DEQ has negotiated a similar Order that revises the requirements of the 1999 Order applicable to Alleghany County. The County has signed that revised Order and it is now in its comment period.

Rocky Top Wood Preservers, Incorporated, Rocky Mount - Consent Special Order w/ Civil Charge: The Company has a VPDES permit with a Whole Effluent Toxicity (WET) limit. The Company began violating the limit in 1999. The Company completed projects such as adding limestone riprap to storm water channels leading to outfall 001 in an effort to adjust pH, added baffles to several storm drains to slow runoff and allow solids in suspension to settle and reduce pollutants,

and added a washing step of lumber charges to its post process in an effort to improve wastewater quality in early 2001. In July of 2001 the Company contracted with an environmental consultant to assist formulating Hydro Kleen units in drop inlets at the facility on 9/11/02. Despite these efforts permit effluent limit violations continued. The Company took corrective actions in the form of extending by an hour vacuum drying time of the wood treating cycle, full operation of the wash ring used to remove excessive surface chemicals from treated lumber, visual inspection of the drip pad by the Company's plant manager to insure proper drying times were being met before removal from the pad, and adding a weekly visual inspection of the storm water Hydro Kleen units. The Order only requires the payment of a civil charge. Since July of 2003 the Company has not violated its WET limits. The Company changed its manufacturing process from using chromium/copper/arsenic to other wood treatment chemicals and has been able to meet the WET limit for almost 3 years. Since the Company is now meeting permit limits a Consent Order, with a civil charge only, is presented for resolution of the past violations. Civil Charge: \$2,400

City of Franklin - Consent Special Order with a Civil Charge: The City of Franklin ("the City") operates a wastewater treatment plant and is subject to the Permit which authorizes the City to discharge treated wastewater. The Permit includes monthly and weekly average loading and concentration limits for total suspended solids ("TSS"), monthly and weekly average concentration limits for total recoverable copper and ammonia-nitrogen, and a monthly average concentration limit for fecal coliform. The facility is classified as a major facility. During the May, June, September and December 2005 monitoring periods, the City reported exceedances of the monthly average concentration limit for fecal coliform in May and June of 2005, the weekly and monthly average concentration limit for ammonia-nitrogen in June 2005, the weekly average concentration limit for TSS in September 2005, and the weekly and monthly average concentration limit for total recoverable copper in September and December 2005. DEQ issued warning letters and a notice of violation advising the City of the exceedances. DEQ received responses from the City stating that the City has resolved the problems which caused the exceedances of fecal coliform, ammonia-nitrogen, and TSS and it is working with consultants to determine the cause of the total recoverable copper exceedance. The City has not reported exceedances of its Permit limits since the December 2005 monitoring period. The Order would require the City to pay a civil charge within 30 days of the effective date of the Order and to submit and implement a corrective action plan and schedule to achieve consistent compliance with the total recoverable copper limit. The City signed the Order on April 12, 2006. Civil Charge: \$4,300

Robert L. Ingram, Jr., Norfolk - Consent Special Order with a Civil Charge: Robert L. Ingram, Jr. ("Mr. Ingram") owns and operates an automobile salvage yard. Storm water discharges from the facility were previously subject to the Permit through Registration No. VAR550251, which was issued February 25, 2003, and expired June 30, 2004. Mr. Ingram was required to submit a registration statement by January 1, 2004 to maintain coverage under the reissued Permit. On October 12, 2004, DEQ issued a Notice of Violation ("NOV") advising Mr. Ingram that he no longer had Permit coverage. DEQ received Mr. Ingram's registration statement on October 15, 2004 and issued Registration No. VAR051350 on October 26, 2004. Mr. Ingram did not have Permit coverage from July 1, 2004 through October 25, 2004 during which time discharges occurred at the facility as evidenced by sampling and rain data. On October 25, 2005 DEQ compliance staff conducted an inspection of the facility which revealed overall poor housekeeping practices, failure to conduct routine site inspections and required training, failure to provide the storm water pollution prevention plan ("SWP3"), a site map, and non-storm water certification. On December 14, 2005, DEQ issued a NOV advising Mr. Ingram of the deficiencies revealed during the facility inspection conducted on October

25, 2005. On January 24, 2006, Mr. Ingram submitted a response to DEQ regarding the NOV indicating that he has improved housekeeping practices and pollution prevention training was conducted. The Order would require Mr. Ingram to pay a civil charge within 30 days of the effective date of the Order and submit documentation of routine inspections, certification of employee training, a current SWP3, non-storm water certification, a corrective action plan and a schedule to address the housekeeping deficiencies observed during the inspection. Mr. Ingram signed the Order on March 13, 2006. Civil Charge: 3,700

Town of Blackstone Wastewater Treatment Plant ("WWTP") - Consent Special Order with a Civil Charge and a Supplemental Environmental Project ("SEP"): In August 2005, DEQ conducted an inspection of the Blackstone WWTP and found that Blackstone failed to properly operate the chlorine ("Cl₂") disinfection system in accordance with the approved Operations and Maintenance ("O&M") Manual; failed to properly operate the sulfur dioxide ("SO₂") de-chlorinating system in accordance with the O&M Manual; modified the Cl₂ disinfection system without notice to DEQ; modified the SO₂ de-chlorinating system without notice to DEQ; and, pumped wastewater from the secondary clarifier to the SO₂ de-chlorinating system, thus bypassing the Cl₂ disinfection system. In bypassing the Cl₂ disinfection, Blackstone discharged approximately 8,000 to 10,000 gallons per day of non-disinfected wastewater. According to Blackstone, the unpermitted discharge occurred over a period of nearly 90 days in mid-2005. These improper and/or unauthorized practices have since been discontinued. The Order requires Blackstone to pay a civil charge and to complete a SEP. Civil Charge: \$14,400 - Of the total civil charge assessed, \$3,600 will be paid as a cash civil charge. The balance (\$10,800) will be satisfied upon Blackstone's completion of a SEP. Under the terms of the SEP, which is in the Pollution Reduction category, Blackstone is to install back-up generators at the WWTP to prevent pollutants from entering the environment in the event of a power outage.

Culpeper County School Board - Consent Special Order w/ Civil Charge: Emerald Hill Elementary School STP ("STP") is a 0.01 MGD plant that serves approximately 1,000 people at the elementary school in Culpeper County. Culpeper County School Board ("County") owns and operates the STP and was referred to enforcement on December 15, 2005 for exceeding permit effluent limits for Biochemical Oxygen Demand ("BOD"), Carboneous Biochemical Oxygen Demand ("CBOD"), and Total Suspended Solids ("TSS"). The STP is a package plant that was newly installed in 1997 and uses an extended aeration activated sludge process that was designed to consist of, among other things, a clarifier and a continuous gravity filter ("CGF") prior to post-aeration. As part of the designed treatment process, secondary effluent was to flow from the clarifier to a CGF. The CGF consisted of a vertical, cylindrical, steel tank containing sand filter media. BOD, CBOD, and TSS violations began in early 2005 and the contract operator at the time attributed them to a system upset. The cause for the upset was believed to be an introduction of an excessive amount of cleaners and floor strippers into the system that resulted in poor treatment efficiency. The operator conducted a training session on March 10, 2005 during which time all school staff, including janitorial and maintenance staff, were instructed as to what materials could and could not be discharged into the STP. Violations ceased during the summer of 2005 when school was no longer in session and the STP was not discharging. TSS violations occurred again in the fall of 2005 when the school year resumed and continued throughout the school year. DEQ held a meeting with County representatives on February 2, 2006 to discuss these compliances issues and ways to return to compliance. At the meeting, the County agreed to evaluate whether the chlorination/dechlorination tablets used in the STP were contributing to the TSS violations. Furthermore, the County explained that because of the design of the CGF, the filter has never worked correctly. The CGF was used during the initial plant start up in 1997, but the operator had problems with the filter blinding. The County changed the media in the filter in October 2002 and

tried to restart it. The operator encountered problems again and the filter was taken offline sometime after October 2002. The County asserts that with a modified or replaced sand filter that treatment efficiency should improve significantly to allow the STP to consistently meet permit effluent limits. The proposed Order requires the County to complete a modification or replacement of the sand bed filter. The County will also evaluate its chlorination/dechlorination process to determine if it could be upgraded to improve treatment performance. Civil Charge: \$3,200

Homes by Blue Ridge, Ltd., Augusta County - Consent Special Order with Civil Charge: Homes by Blue Ridge LTD (HBBR) owns and operates the Homes by Blue Ridge LTD Sewage Treatment Plant ("Blue Ridge STP" or "the Facility"). The Facility serves a mobile home park in Augusta County. The discharge from the Facility did not meet the Permit effluent limit for chlorine in March and April, 2004, July through November, 2004, as well as January and February, 2005. Additionally, HBBR failed to submit a timely Permit application in December, 2004, failed to submit several other required documents, and in June, 2005, discharged from the Facility without an effective Permit. The Permit expired on May 30, 2005 and was reissued to HBBR on September 12, 2005. All violations detailed in the Order have been corrected. The Order also contains a civil charge. Civil Charge: \$5,200

INVISTA S.a.r.l., LLC, Augusta County - Consent Special Order with Civil Charge: INVISTA owns and operates the wastewater treatment facility serving the Company, which manufactures Lycra in Augusta County, Virginia. The Facility discharges to the South River in the Shenandoah River subbasin, Potomac River basin. INVISTA experienced 10 unusual discharges (bypasses/overflows) during the period of June 2005 through September 2005, eight (8) of which were not reported to DEQ within 24 hours as required by the Permit; however, the Company did report these discharges on cover letters submitted with the DMRs. These bypasses/overflows were of almost completely treated wastewater and storm water. These bypasses/overflows, however, were not properly monitored. On August 12, 2005, DEQ issued a Warning Letter to INVISTA, citing an ammonia effluent limitation violation which occurred in June 2005. On September 1, 2005, INVISTA experienced an unpermitted discharge of coal ash to the South River resulting from a spill. On September 14, 2005, DEQ issued a NOV to INVISTA, citing July 2005 bypasses/overflows which were not reported in a timely manner, and an ammonia effluent limitation violation occurring during July 2005. On September 30, 2005, DEQ met with INVISTA in an informal conference to discuss the September 14, 2005 NOV and resolution of the violations. The September 30, 2005 meeting included discussions of the Facility operations, especially as related to the unpermitted discharges and the bypasses/overflows, and the Company's rationale for failing to report in a timely manner. In addition, the Company was requested to submit a plan and schedule of corrective actions to return the Facility to compliance. On September 30, 2005, INVISTA experienced a bypass/overflow of treated wastewater at a mix box that occurred when two pumps cut out for unknown reasons. The company estimated that 6,000 gallons of treated wastewater were released to the South River. On October 3, 2005, DEQ received a report of an unpermitted discharge of coal ash to the South River from INVISTA, which was reported to the Company on October 2, 2005. INVISTA notified DEQ within the Permit's requirement of 24 hours. On October 4, 2005, DEQ investigated the report and discovered that the Company had an unpermitted discharge of coal ash solids to State waters which coated a strip of the river bottom extending approximately 30 yards downstream of the outfall. On October 5, 2005, DEQ advised the Company to vacuum the visible particulate materials from the stream bottom. A storm event, however, washed away the deposit before the Company could vacuum up the deposit. On October 17, 2005, DEQ issued a NOV to INVISTA for two bypasses/overflows which were not reported in a timely manner and three bypasses/overflows that all occurred in August 2005. On October 26, 2005, INVISTA experienced an unpermitted discharge from the anoxic tank, which released an estimated 10,900 gallons of partially

treated wastewater. By letter dated October 28, 2005, DEQ received the Company's corrective action plan and schedule. Portions of this plan and schedule have been incorporated into Appendix A of this Order. On November 4, 2005, DEQ met with INVISTA in an informal conference to discuss the October 17, 2005 NOV and resolution of the violations. The November 4, 2005 meeting included discussions and visual inspections of the Facility operations, especially as related to the coal ash and anoxic tank spills. On November 5, 2005, INVISTA reported to DEQ a spill of titanium dioxide to the South River. On November 9, 2005, DEQ issued a NOV to INVISTA for the unpermitted discharges of coal ash on September 1, 2005, and the coal ash spill on October 2, 2005. In addition, the NOV cited an overflow that occurred on September 30, 2005 and an unauthorized discharge from the anoxic tank on October 26, 2005. The titanium dioxide spill was not cited on the November 9, 2005 NOV. In November 2005 and January 2006, INVISTA experienced and reported ammonia exceedances at Outfall 011. On February 3, 2006, DEQ issued NOV Number W2006-02-V-0009 to INVISTA for the November 5, 2005 titanium dioxide spill and apparent violations of ammonia limitations occurring in November 2005, and an unauthorized discharge on January 12, 2006. On March 6, 2006, DEQ issued NOV Number W2006-03-V-0001 to INVISTA for apparent violations of ammonia limitations occurring in January 2006. The proposed Order, signed by INVISTA on April 7, 2006, would require INVISTA to address sewer integrity problems, evaluate the level of treatment the coal filter is exerting on the waste-stream, and evaluate potential sources of pollutants entering the waste-stream. Costs of compliance - \$1,000,000. Civil Charge: \$26,900 of which \$20,019 will be offset with a SEP. The SEP to be performed by INVISTA is delivery of a check for \$20,019 to the City of Waynesboro to be used for the purposes of purchasing hazmat equipment for the Waynesboro Fire Department.

Pine Hills Water & Sewer Company for Jackson's Chase Waste Water Treatment Plant, Warren County - Consent Special Order with Civil Charge: Pine Hills Water & Sewer Company owns and operates the Jackson's Chase Waste Water Treatment Plant (Facility). The discharge from the Facility did not meet the Permit effluent limit for CBOD5 in June, 2005. Additionally, Pine Hills Water & Sewer Company failed to submit a timely 1st Annual Financial Assurance Review/Adjustment document. All violations detailed in the Order have been corrected. The Order also contains a civil charge. Civil Charge: \$3,500

White's Truck Stop, Inc., Rockbridge County - Consent Special Order with Civil Charge: White's owns and operates the wastewater treatment facility (STP and oil/water separator) serving the truck stop in Rockbridge County, Virginia, which is the subject of the Permit. The Facility discharges to Moore's Creek in the James (Upper) River basin. DEQ issued Warning Letter No. W2005-01-V-1004 on January 5, 2005 to White's for failure to submit the 1st quarterly acute and chronic TMP tests due October 10, 2004. DEQ issued NOV No. W2005-03-V-0013 on March 30, 2005 to White's for failure to sample and report for Outfall 002 during January 2005, failure to submit acute and chronic TMP reports due October 10, 2004 and January 10, 2005, and for late submittal of water quality monitoring data due August 10, 2004 for Outfall 001. On April 13, 2005, DEQ met with White's in an informal conference to discuss the March 30, 2005 NOV and resolution of the violations. The April 13, 2005 meeting included discussions of the Facility operations and the need for a plan and schedule of corrective actions to ensure compliance with Permit requirements. DEQ issued a NOV on May 10, 2005 to White's for violations of pH and D.O. effluent limits at Outfall 001, and ammonia effluent limits at Outfall 002 occurring during February and March 2005. By submittals dated May 13, August 26, September 15 and November 18, 2005, White's, via its consultant, provided a written plan and schedule of corrective actions to ensure compliance with Permit requirements. Sections of this plan and schedule have been incorporated into Appendix A of the Order. DEQ issued additional NOVs on June 9, July 19, August 15, September 14, and December 21, 2005 to White's for failure to submit

quarterly chronic TMP reports. DEQ issued NOVs on October 17 and November 9, 2005 and February 3, 2006 to White's for effluent limits violations at Outfall 001. Until October 2005, White's had been incorrectly reporting BOD effluent sampling results instead of the Permit required CBOD sampling and reporting for Outfall 002. The improper reporting violations have not been cited on any enforcement documents. In October 2005, White's made certain operational changes to address CBOD problems at Outfall 002, including installation of equipment to allow the pumping of effluent on a regular basis. The proposed Order, signed by White's Truck Stop, Inc. on March 27, 2006, would require White's to take corrective actions to address the effluent limitation violations by upgrading the treatment for Outfall 002, and to take Outfall 001 offline through the connection to the Rockbridge County PSA's expanded collection system. The Order would also contain a civil charge. Civil Charge: \$4,400